

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN M BALE,

Plaintiff,

v.

CHARLES N SCHANDEL,

Defendant.

CASE NO. C12-5957 RJB-JRC

ORDER DIRECTING THE
PLAINTIFF TO SUPPLY
ADDITIONAL BRIEFING AND
DENYING PLAINTIFF'S MOTION
FOR AN INVESTIGATOR

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge, J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Plaintiff asks the Court to appoint an investigator to help him contact three witnesses (ECF No. 21). Plaintiff does not inform the Court who the witnesses are or what information plaintiff believes these witnesses can provide (ECF No. 21).

28 U.S.C. §1915(e) gives the Court the authority to appoint counsel in exceptional cases. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221,

1 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). The statute does not address
2 the appointment of expert witnesses or an investigator.

3 Plaintiff has moved for appointment of counsel twice in this action (ECF No. 11 and 17).
4 The Court denied those motions because plaintiff had not developed the record and presented
5 evidence showing any likelihood of success on the merits (ECF No. 13 and 20). Plaintiff's motion
6 causes the Court to consider if plaintiff is able to develop the record.

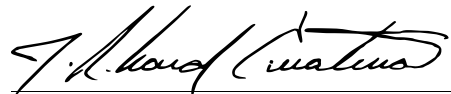
7 The Court directs plaintiff to file a report telling the Court what discovery plaintiff has
8 requested and what discovery he has been able to obtain. Plaintiff's report will be due on or
9 before July 26, 2013. Plaintiff's report should include:

- 10 1. If plaintiff sent requests for production of documents to opposing counsel
and the response;
- 11 2. If plaintiff sent interrogatories to opposing counsel and the response;
- 12 3. If plaintiff sent any requests for admission to opposing counsel and the response;
- 13 4. If plaintiff has attempted to arrange for depositions; and
- 14 5. What other discovery plaintiff obtained, such as public disclosure requests.

15 After receiving plaintiff's report, the Court will consider if the parties need to brief the
16 possibility of appointing counsel in this case.

17 The motion for appointment of an investigator is denied. The Clerk's office is directed to
18 note the July 26, 2013, due date on the Court's calendar.

19 Dated this 18th day of June, 2013.

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21 J. Richard Creatura
22 United States Magistrate Judge
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